

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LAMONT BRYANT,

Petitioner,

05 Civ. 0437 (PKC)

-against-

ORDER ADOPTING REPORT
AND RECOMMENDATION

BRIAN FISCHER, Superintendent, Sing Sing
Correctional Facility

Respondent.

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P. KEVIN CASTEL, District Judge:

In August 2001, after a jury trial in the New York Supreme Court, Bronx County, petitioner Lamont Bryant was convicted of one count of Assault in the Second Degree (N.Y. PENAL LAW 120.05[2]) and sentenced as a persistent violent felony offender to a term of imprisonment from fifteen years to life. After pursuing his state law remedies, on December 1, 2004, petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, seeking relief on the grounds that: (1) he was denied due process by the trial court's failure to instruct the jury on the defense of justification; (2) his sentencing as a persistent violent felony offender was improper because the 1996 predicate conviction was obtained in violation of his constitutional rights; and (3) his sentence of fifteen years to life was excessive and should be reduced. I referred the petition to the Honorable Andrew J. Peck, then Chief Magistrate Judge. On December 14, 2005, Judge Peck issued a 64-page Report and Recommendation ("R & R") urging the Court to deny the petition in its entirety. The R & R advised the parties that they had ten days from service of the R & R to file any objections. As of the date of this Order, no

objections have been filed.


Having reviewed Judge Peck's R & R, I find it to be well reasoned and thoroughly grounded in law. Judge Peck reviewed petitioner's submissions, the transcripts of petitioner's state court proceedings and case law governing the issues raised in the petition and properly concluded that: (1) the State appellate court correctly applied New York law in upholding the trial court's decision not to charge the jury on justification, obviating the need to reach petitioner's due process claim on the merits; (2) because petitioner's 1996 conviction was no longer open to direct or collateral attack, the Supreme Court's ruling in Lackawanna County Dist. Attorney v. Coss, 532 U.S. 394 (2001), precludes him from challenging the constitutionality of that conviction in this proceeding; and (3) petitioner's excessive sentence claim does not provide a basis for federal habeas corpus relief, as the sentence imposed was within the statutory range.

The R & R is adopted in its entirety, and the petition is DENIED. The Clerk is directed to enter judgment in favor of the respondent.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253; see Lozada v. United States, 107 F.3d 1011, 1016-17 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith. See Coppedge v.

United States, 369 U.S. 438 (1962).

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
February 8, 2006